

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number 2017-5 Rule Number He-M 611

<p>1. Agency Name & Address:</p> <p>Department of Health & Human Services New Hampshire Hospital 33 Clinton Street Concord, NH 03301</p> <p>5. Filing Date: January 9, 2017</p>	<p>2. RSA Authority: RSA 622:45, II, IV; RSA 171-A:8-a, I; RSA 135-C:61, IX; RSA 135-C:48</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption <u>X</u></p> <p>Readoption w/amendment _____</p>
---	---

6. Short Title: **Secure Psychiatric Unit Transfers**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Catherine Bernhard	Title:	Rules Coordinator
Address:	Dept. of Health & Human Services Administrative Rules Unit 129 Pleasant Street Concord, NH 03301	Phone #:	271-9374
		Fax#:	271-5590
		E-mail:	catherine.bernhard@dhhs.state.nh.us

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Summary explaining the effect of the rule:

He-M 611 is scheduled to expire on February 1, 2017. The interim rule is being proposed to readopt the rule unchanged in accordance with RSA 541-A:19, I(d) to continue the rule which would otherwise expire before the completion of readoption of the rule by the Department.

He-M 611 defines the criteria and procedures for the transfer of involuntarily admitted persons with mental illness or intellectual disability from New Hampshire Hospital (NHH) or any designated receiving facility in the developmental disabilities services system to the Secure Psychiatric Unit (SPU) in the correctional services system.

The proposed interim rule He-M 611 meets the criteria of the Governor's January 5, 2017 memo to agency heads that current rulemaking be "immediately essential to the public, health, safety, or welfare." He-M 611 allows for the transfer of certain persons presenting a serious likelihood of danger to themselves or others and who cannot be safely cared for at NH Hospital (NHH) or a designated receiving facility in the developmental disabilities services system (DRF) to the secured psychiatric unit in the department of corrections system. The authority to transfer persons who meet the criteria set forth in He-M 611 is immediately essential to the public health and safety.

9. Listing of people, enterprises, and government agencies affected by the rule:

Those affected by the rule include involuntarily admitted persons with mental illness or intellectual disability residing at New Hampshire hospital, the SPU of the department of corrections, or any designated receiving facility in the developmental disabilities services system. The staff and other persons cared for at such facilities are also affected by the rule.

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

Rule	Specific State Statute the Rule Implements
He-M 611.01 - 611.02	RSA 135-C:61, IX, RSA 171-A:8-a
He-M 611.03	RSA 171-B:15; RSA 135-C:61, IX; RSA 171-A:8-a
He-M 611.04	RSA 622:45
He-M 611.05	RSA 135-C:31, V; 48; RSA 171-A:8-a; RSA 171-B:15; RSA 622:45
He-M 611.06	RSA 135-C:31, V; 48; RSA 171-A:8-a
He-M 611.07	RSA 135-C:61, IX; RSA 171-A:8-a
He-M 611.08	RSA 135-C:61, IX; RSA 171-A:8-a
He-M 611.09	RSA 622:45, IV
He-M 611.10	RSA 622:45, IV
He-M 611.11	RSA 622:45, IV

11. Summary of the effect upon the state if the rule were not adopted:

If the interim rule were not readopted, the Department would lack the administrative mechanism to safely transfer to the SPU persons who present a serious likelihood of danger to themselves or others, and who cannot be safely cared for at either NHH or the developmental services DRF.

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

January 20, 2017.

13. The fiscal impact statement prepared by the Legislative Budget Assistant, if applicable.

A fiscal impact statement is not required for this interim rule.

Readopt He-M 611, effective 2-1-09 (Document # 9371) to read as follows:

PART He-M 611 SECURE PSYCHIATRIC UNIT TRANSFERS

Statutory Authority: New Hampshire RSA 171-A:8-a; 135-C:61, IX; 135-C:48; 622:45, II

He-M 611.01 Purpose. The purpose of these rules is to define the criteria and procedures for the transfer of involuntarily admitted persons with mental illness or intellectual disability from New Hampshire hospital or any designated receiving facility in the developmental disabilities services system to the secure psychiatric unit in the correctional services system.

He-M 611.02 Definitions. The words and phrases used in these rules shall mean the following:

(a) “Administrator” means the staff member responsible for the overall operation of a designated receiving facility, or that person’s designee.

(b) “Commissioner” means the commissioner of the department of health and human services or his or her designee.

(c) “Corrections commissioner” means the commissioner of the department of corrections or his or her designee.

(d) “Designated receiving facility (DRF)” means New Hampshire hospital or a developmental services program designated as a receiving facility under RSA 171-A:20 and He-M 526.

(e) “Hearing” means “adjudicative proceeding” as defined by RSA 541-A:1, I, namely “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.”

(f) “Independent review” means the non-adjudicatory process leading to a decision on an administrative appeal provided for by RSA 126-A:5, VIII, and pursuant to He-C 200.

(g) “Medical unit director” means the person responsible for the provision, supervision and administration of medical and psychiatric services for the department of corrections and the unit pursuant to RSA 622:43, I, (a).

(h) “Unit” means the secure psychiatric unit established by RSA 622:41.

He-M 611.03 Categories of Admission or Transfer to the Unit. Persons shall be admitted or transferred to the unit from the jurisdiction of the mental health or developmental services system under the following circumstances:

(a) Upon order of a probate court pursuant to RSA 622:45 or 171-B:12; or

(b) Upon an order by the chief executive officer of New Hampshire hospital, or designee, to which the person has been committed pursuant to RSA 135-C:27-33 or RSA 135-C:34-54, or by the administrator of a DRF to which the person has been committed pursuant to RSA 171-B:12 when:

(1) The transfer has been approved by the commissioner and the corrections commissioner;
or

(2) An emergency has been determined to exist pursuant to He-M 611.06(b).

He-M 611.04 Admissions by Probate Court. Pursuant to RSA 622:45, I (a) and (c), a probate court may order a person to be involuntarily admitted to the unit.

He-M 611.05 Transfers to the Unit.

(a) The chief executive officer of New Hampshire hospital, or designee, or the administrator of a developmental services DRF shall transfer a person from the DRF to the unit under the following circumstances:

- (1) The person was admitted either to New Hampshire hospital or the developmental services DRF by:
 - a. An involuntary emergency admission pursuant to RSA 135-C:27-33;
 - b. An involuntary admission pursuant to RSA 135-C:34-54;
 - c. An involuntary admission pursuant to RSA 171-B; or
 - d. The administrator of a state DRF;
 - (2) The chief executive officer, or designee, or administrator has determined that the person would present a serious likelihood of danger to self or others if retained at either New Hampshire hospital or the developmental services DRF;
 - (3) Such determination of serious likelihood of danger is based upon the behavior(s) of the person to be transferred or other circumstances which create a strong probability that New Hampshire hospital or the developmental services DRF cannot reasonably provide the degree of safety and security necessary to prevent the harm;
 - (4) The person has been informed verbally and in writing of the proposed transfer and the reasons therefor, and has been given the opportunity to consent to the transfer; and
 - (5) The commissioner and the corrections commissioner, or a third party who is mutually acceptable to the commissioner and corrections commissioner, determine that the criteria in (1)-(4) above have been met.
- (b) In approving or objecting to a transfer pursuant to (c)-(g) below, the commissioner, corrections commissioner, or third party shall determine whether the criteria in He-M 611.05(a)(1)-(4) have been met. Any transfer that meets such criteria shall be approved.
- (c) An order for transfer shall be signed by the chief executive officer of New Hampshire hospital, or designee, or by the administrator of the developmental services DRF and sent to the commissioner for approval. If the commissioner objects to the transfer, the transfer shall not be made. If the commissioner approves the transfer, the order for transfer shall be sent to the corrections commissioner.
- (d) If the corrections commissioner objects to the transfer, the transfer shall not be made. However, the commissioner and the corrections commissioner may agree to have the disagreement resolved by a mutually acceptable third party. The decision of the third party shall be binding upon the commissioner and the corrections commissioner.
- (e) If the third party objects to the transfer, the transfer shall not be made.
- (f) If the commissioner and the corrections commissioner, or the third party, approve the transfer and the person to be transferred has consented to the proposed transfer, the administrator ordering the transfer shall be notified and shall make arrangements for the transfer in accordance with He-M 611.08.
- (g) If the commissioner and the corrections commissioner, or the third party, approve the transfer and the person to be transferred objects to the proposed transfer and requests an appeal of the proposed

transfer, the person shall not be transferred. A hearing or independent review on the proposed transfer shall be held in accordance with He-M 611.07.

He-M 611.06 Emergency Transfers to the Unit.

(a) In the event of an emergency as specified by (b) below, a person who has been admitted to New Hampshire hospital by an involuntary emergency admission pursuant to RSA 135-C:27-33 or an involuntary admission pursuant to RSA 135-C:34-54 or to a developmental services DRF pursuant to RSA 171-B:12 shall be transferred to the unit without the prior approval of the commissioner and the corrections commissioner.

(b) The chief executive officer of New Hampshire hospital, or designee, or administrator of the developmental services DRF shall determine that an emergency exists when:

(1) There is a serious likelihood of danger to the person or to others if the transfer is not made; and

(2) An immediate transfer is necessary in order to protect the person or others.

(c) The determination of a serious likelihood of danger shall be based upon the behavior(s) of the person to be transferred or other circumstances which create a strong probability that the person will cause or attempt to cause harm to self or others and New Hampshire hospital or the developmental services DRF cannot reasonably provide the degree of safety and security necessary to prevent the harm.

(d) Prior to the emergency transfer of the person, the person and his or her guardian, if one has been appointed, shall be informed verbally and in writing of the transfer and reasons therefor, and shall be given an opportunity to consent to the transfer.

(e) Within 24 hours, excluding Saturdays, Sundays and holidays, of an emergency transfer, the chief executive officer of New Hampshire hospital, or designee, or the administrator of the developmental services DRF shall obtain the approval of the commissioner and the corrections commissioner for the transfer of the person.

(f) Exceptions to (e) above shall be as follows:

(1) If the commissioner approves an emergency transfer and the corrections commissioner objects to the transfer, they may agree to have the disagreement resolved by a mutually acceptable third party;

(2) Except as provided for in (1) above, if the approvals of the commissioner and the corrections commissioner are not obtained within 24 hours after the transfer, excluding Saturdays, Sundays and holidays, the person shall be immediately returned to the DRF from which he or she was transferred;

(3) The decision of the third party shall be made no later than 72 hours, excluding Saturdays, Sundays, and holidays, following the emergency transfer and shall be binding upon the commissioner and the corrections commissioner; and

(4) If the third party objects to the transfer, the person shall be immediately returned to the DRF from which he or she was transferred.

(g) If the commissioner and the corrections commissioner, or the third party, approve the emergency transfer, the person transferred to the unit shall be under the care and custody of the corrections commissioner and the medical unit director.

(h) If the person transferred to the unit objects to the transfer, he or she may appeal the decision to the commissioner and be afforded a hearing or independent review of the transfer in accordance with the procedures set forth in He-M 611.07 and He-C 200 within 5 working days, excluding Saturdays, Sundays and holidays, after the transfer has been approved.

He-M 611.07 Hearings and Independent Reviews.

(a) If a person objects to a proposed or actual transfer in accordance with He-M 611.05(g) or He-M 611.06(h), he or she may request a hearing or independent review of the decision to transfer by the commissioner. A person being transferred shall be provided notice of his or her rights including his or her right to appeal. Such notice shall include a description of the substantive and procedural differences between the right to appeal by independent review or a hearing.

(b) A hearing or an independent review of the decision to transfer shall be scheduled by the commissioner within 5 days of receipt of the request, excluding Saturdays, Sundays, and holidays, and held in accordance with He-C 200.

(c) If a person objects to a transfer, requests a hearing, and requests legal counsel, he or she shall be provided with legal counsel at no cost.

(d) In the case of a proposed transfer, within 15 days following a hearing or an independent review, the commissioner shall issue a written decision and:

(1) If the evidence presented is clear and convincing that the criteria set forth in He-M 611.05(a)(1)-(4) are met, the transfer shall be made in accordance with He-M 611.08; or

(2) If the evidence presented is not clear and convincing that the criteria set forth in He-M 611.05(a)(1)-(4) are met, the transfer shall not be made.

(e) In the case of an emergency transfer, within 15 days following a hearing or an independent review, the commissioner shall issue a written decision and, if the evidence presented does not support a conclusion that the criteria set forth in He-M 611.06(a)-(d) are met, the objection to transfer shall be upheld and the person shall be returned within 72 hours to either New Hampshire hospital or the developmental services DRF from which he or she was transferred.

He-M 611.08 Transfer Procedures.

(a) The DRF administrator who has ordered the transfer of a person under the emergency procedures in He-M 611.06 or who has received approval to transfer a person under He-M 611.05 shall promptly inform the unit of the transfer.

(b) Persons to be transferred to the unit or returned by the unit to New Hampshire hospital or the developmental services DRF shall be transported by DRF staff, unit staff, or any law enforcement officer empowered to act under RSA 135-C:62 or 171-A:27. The administrator ordering the transfer shall inform the unit, by telephone, of the transfer arrangements at least 2 hours in advance of the transfer.

(c) The administrator ordering a transfer shall cause a copy of the emergency order or other approved order of transfer to be delivered with the person to the unit and notify the commissioner and the corrections commissioner when a transfer is made.

He-M 611.09 Readmissions to the Secure Psychiatric Unit. Persons transferred to a mental health or developmental services DRF from the unit pursuant to RSA 622:48 who are transferred back to the unit shall be transferred under the provisions of He-M 611.

He-M 611.10 Jurisdiction. Pursuant to RSA 622:45, IV, persons admitted or transferred to the unit shall be under the care and custody of the corrections commissioner and the medical unit director and shall be subject to the rules of the corrections commissioner.

He-M 611.11 Commitment Limitations.

(a) Pursuant to RSA 622:45, IV, no person shall be retained in the unit longer than the period of the order of involuntary admission to the mental health or developmental services system to which he or she was subject at the time of transfer except upon further order of a court.

(b) New Hampshire hospital or a developmental services DRF, as applicable, shall collaborate with the unit in order to review each person's treatment plan and the best location for ongoing care during the period of commitment.

Appendix A

Rule	Specific State Statute the Rule Implements
He-M 611.01 - 611.02	RSA 135-C:61, IX, RSA 171-A:8-a
He-M 611.03	RSA 171-B:15; RSA 135-C:61, IX; RSA 171-A:8-a
He-M 611.04	RSA 622:45
He-M 611.05	RSA 135-C:31, V; 48; RSA 171-A:8-a; RSA 171-B:15; RSA 622:45
He-M 611.06	RSA 135-C:31, V; 48; RSA 171-A:8-a
He-M 611.07	RSA 135-C:61, IX; RSA 171-A:8-a
He-M 611.08	RSA 135-C:61, IX; RSA 171-A:8-a
He-M 611.09	RSA 622:45, IV
He-M 611.10	RSA 622:45, IV
He-M 611.11	RSA 622:45, IV